

DE 03-025 through DE 03-029
and
DE 03-031 through DE 03-039

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Hydro Power Supply Arrangements

Prehearing Conference Order

O R D E R N O. 24,152

April 4, 2003

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Michael W. Holmes, Esq. for the Office of Consumer Advocate; Frederick J. Coolbroth, Esq., of Devine, Millimet and Branch, for the fourteen affiliated hydro producers; Anthony F. Simon, Esq. for the Town of Goffstown, in DE 03-034; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 13, 2003, Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission) a series of petitions seeking approval of renegotiated power purchase arrangements with fourteen hydro-electric independent power producers (collectively, hydro producers) from which PSNH currently purchases power pursuant to rate orders previously entered by the Commission or power purchase contracts previously authorized by the Commission. The petitions concern HDI Associates III-Ashuelot Hydro (Docket No. DE 03-025), Avery Hydroelectric Associates-Avery Dam (Docket No. DE 03-026), Hadley Falls Associates-Hadley Falls (Docket No. DE 03-027), Lakeport Hydroelectric Corporation-Lakeport Dam (Docket No. DE 03-028), HDI Associates III-Lower Robertson Dam (Docket

No. DE 03-029), Franklin Power LLC-River Bend Hydro (Docket No. DE 03-031), Franklin Power LLC-Stevens Mill (Docket No. DE 03-032), Clement Dam Hydroelectric LLC-Clement Dam (Docket No. DE 03-033), Greggs Falls Hydroelectric Associates-Greggs Falls (Docket No. DE 03-034), HDI Associates I-Hopkinton Hydro (Docket No. DE 03-035), HDI Associates I-Lochmere Dam (Docket No. DE 03-036), SFR Hydro Corporation-Milton Mills Hydro (Docket No. DE 03-037), Mine Falls Limited Partnership-Mine Falls (Docket No. DE 03-038) and Pembroke Hydro Associates-Pembroke Hydro (Docket No. DE 03-039). According to PSNH, all of the hydro producers are affiliates of Algonquin Power Systems, Inc. (Algonquin).

Under each renegotiated arrangement, PSNH will make a lump sum payment to each of the hydro producers in exchange for a buyout of the respective long term power contracts or rate orders. PSNH would then no longer be required to purchase the generation output from the hydro producers at the rate order/contract prices and the hydro producers would no longer be obligated to sell all of their generation to PSNH. PSNH would, however, continue to be obligated to purchase the entire generation output of the facilities at the short term rates established from time to time by the Commission. In addition, neither PSNH nor Algonquin is obligated to close on any of the

transactions unless all fourteen buyout agreements are approved by the Commission without material conditions.

On February 27, 2003, the Commission issued an Order of Notice establishing a Prehearing Conference, which was held at the Commission on March 25, 2003. On March 3, 2003, the hydro producers filed notices of intent to participate in their respective dockets, as provided in the Order of Notice. On March 4, 2003, the Office of Consumer Advocate (OCA) filed notice of its intent to participate in these dockets on behalf of residential utility consumers pursuant to the powers and duties granted to the OCA under RSA 363:28,II.

On March 17, 2003, the State of New Hampshire Water Resources Council (WRC) filed motions to intervene in several of the dockets, namely, Avery Hydroelectric Associates-Avery Dam (Docket No. DE 03-026), Hadley Falls Associates-Hadley Falls (Docket No. DE 03-027), Lakeport Hydroelectric Corporation-Lakeport Dam (Docket No. DE 03-028), Greggs Falls Hydroelectric Associates-Greggs Falls (Docket No. DE 03-034), and HDI Associates I-Lochmere Dam (Docket No. DE 03-036). According to the WRC, the State of New Hampshire owns the dams at these facilities and has leased them to the respective hydro producers. The WRC states that the rental income generated from the leases helps to fund the State's Maintenance of Dams Fund.

On March 19, 2003, the Town of Goffstown (Goffstown) petitioned to intervene in Gregg's Falls Hydroelectric Associates-Gregg's Falls (Docket No. DE 03-034). According to Goffstown, Gregg's Falls Hydroelectric Associates makes annual payments in lieu of taxes (PILOT) to Goffstown and implementation of the buyout agreement will result in a serious negative impact to the community due to an anticipated 60 percent reduction in revenues from the Gregg's Falls facility.

After the Prehearing Conference on March 25, 2003, the parties met in a technical session to discuss the filings and a recommended procedural schedule.

On March 28, 2003, Commission Staff filed a letter with the Commission setting forth a recommended procedural schedule agreed to by the parties.

On April 2, 2003, the OCA, with the concurrence of the parties and Staff, requested that the April 21, 2003 settlement conference be changed to April 16, 2003, at 10:00 a.m.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. PSNH

PSNH states that seven of the dockets involve proposed buyouts of rate orders and the other seven involve proposed buyouts of power purchase contracts. PSNH estimates that the total savings generated by the buyouts is approximately \$5

million. Pursuant to RSA 362-A:4-d, PSNH is entitled to retain 20 percent of the savings resulting from these renegotiations. According to PSNH, the hydro producers agreed to PSNH's offers provided the dispute involving the Franklin Power, LLC facilities, namely, River Bend Hydro (Docket No. DE 03-031) and Stevens Mill (Docket No. DE 03-032),¹ are resolved and if all the renegotiated arrangements are approved by the Commission. PSNH does not expect to renegotiate any more rate orders or power supply contracts involving hydro facilities.

According to PSNH's filing, the agreements to terminate rate orders and power purchase contracts are substantially similar to the previously renegotiated hydro arrangements approved by the Commission.² PSNH notes, however, that: (i) it has used an additional calendar year of operating data in computing the historical output of the facilities; (ii) the proposed effective date of the transactions is later in time and therefore there are fewer months from which savings may be gained; and (iii) the agreements are conditioned, at the option of PSNH and the hydro producers, on approval and closing of all fourteen renegotiated arrangements on substantially the same terms contained in the buyout agreements.

¹ The dispute is the subject of Docket No. DE 02-169.

² See *Public Service Company of New Hampshire*, Order Nos. 24,021 through 24,031 (August 9, 2002); see also *Public Service Company of New Hampshire*, Order No. 24,098 (December 20, 2002).

B. Hydro Producers

The hydro producers support the PSNH filings.

B. Office of Consumer Advocate

OCA supports the concept behind the renegotiated arrangements but neither supports nor opposes the actual arrangements at this time.

C. WRC

The WRC did not appear at the hearing. Instead, the hydro producers submitted a letter agreement with the WRC, dated March 25, 2003, regarding the dockets in which WRC had petitioned to intervene. Under the agreement, the WRC is withdrawing its petitions to intervene and, assuming the renegotiated arrangements are closed, specified amounts from the lump sum payments will be paid into escrow, pending resolution of litigation regarding lease disputes between the hydro producers and the WRC. According to the letter, the escrow agreements are similar to an escrow agreement involving the Pittsfield Mill facility, see Docket No. DE 02-067.

D. Goffstown

Goffstown states that Greggs Falls Hydroelectric Associates, through PSNH, seeks to have the Commission abrogate the PILOT agreement by changing the basis on which payments are calculated under the agreement. Goffstown states that neither

Greggs Falls Hydroelectric Associates nor PSNH has approached Goffstown requesting to modify the agreement. As a result of the renegotiated arrangement, Goffstown anticipates a revenue reduction of approximately 60 percent from the Greggs Falls facility, the effect of which will be to increase the tax burden on other taxpayers in Goffstown. Goffstown requests that the Commission require Greggs Falls Hydroelectric Associates and/or PSNH to specify how they propose to maintain the current level of PILOT for the balance of the contract term, prior to the initiation of formal proceedings in Docket No. 03-034.

E. Staff

Staff noted that it had supported the renegotiated hydro arrangements proposed by PSNH in 2002 and would be reviewing the similarities and dissimilarities of those arrangements and the renegotiated arrangements proposed in the present dockets before deciding whether to support the pending proposals.

III. PROPOSED PROCEDURAL SCHEDULE

Following the Prehearing Conference, the parties and Staff met in a Technical Session and agreed upon the following schedule, which was submitted to the Commission by letter from Staff dated March 28, 2003, subject to a subsequent revision requested by letter from OCA filed on April 2, 2003.

Responses due for outstanding data requests by the parties.	April 15, 2003
Settlement conference at Commission, starting at 10 a.m.	April 16, 2003
Pre-filed testimony of parties and/or settlement agreement(s) due.	April 25, 2003
Hearing date.	May 1, 2003; alternatively May 9, 2003

IV. PROCEDURAL SCHEDULE AND MOTIONS TO INTERVENE

The Commission has reviewed the Procedural Schedule as proposed herein and has determined that it is reasonable. The hearing date will be May 1, 2003. The Commission acknowledges the WRC's withdrawal of its motion to intervene and the Commission will grant the pending petition to intervene by Goffstown.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as set forth herein is hereby adopted; and it is

FURTHER ORDERED, that the pending petition to intervene by Goffstown is granted.

DE 03-025 - DE 03-029
DE 03-031 - DE 03-039

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By order of the Public Utilities Commission of New
Hampshire this fourth day of April, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary